IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 20488 of 2004

Between:

M/s Yousuf and Company, rep.by its Partner, Mohd.Mehamood, S/o Yousuf, R/o 4-1-579, Troop Bazar Hyderabad

..... PETITIONER

AND

1 Government of Andhra Pradesh, rep.by its Principal Secretary, Industries & Commerce (IF.Cell) Department,
Secretariat, Hyderabad
2 Commissioner of Industries, Andhra Pradesh, Chirag Ali Lane, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ declaring that the action of the respondents in not implementing G.O.Ms.No.367, Industries & Commerce (IF.Cell) Department dated 23-12-2003 and thereby not passing on the benefits to the petitioner with regard to re-delivery of possession of industrial Plots bearing No.14/1 and 24/2 of Azamabad Industrial Area, Hyderabad, is arbitrary and illegal and consequently direct the respondents to allow all the benefits to the petitioner which emanated from the contents of G.O.Ms.No.367 dated 23-12-2003 and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner : MR. V.VENKATARAMANA

Counsel for the Respondents : GP FOR INDUSTRIES & COMMERCE

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.20488 OF 2004

ORDER :

The writ petitioner was leased out industrial plots bearing Plot Nos.14/1 and 24/2 situated at Industrial Area, Azamabad, Hyderabad vide registered lease deed dated 1-9-1965 executed by the first respondent – Government of A.P. for a period of 99 years with specific condition for establishment of industry relating to dyeing and printing. It is stated that the petitioner was in possession of the said plots even prior to the date of execution of the registered lease deeds under a sale made by H.E.H. Nizam which came into effect from 10-3-1943. The petitioner states that they have established an industry in terms of the recitals in the registered lease deed. While so, the first respondent issued G.O.Ms.No.223, dated 11-6-1993 terminating the leasehold rights of the petitioner on the ground that the petitioner has violated the terms and conditions of the lease by allowing three other small scale industrial units to occupy part of self-same industrial plots. It is to be noted that though under G.O.Ms.No.223, dated 11-6-1993 the leasehold rights of the petitioner were terminated and the land was resumed, the functioning of three small scale industrial units was not affected and it was directed by the first respondent that the said three

small scale industries shall be treated as direct lessees of the industrial plots. Questioning the validity of G.O.Ms.No.223, dated 11-6-1993, the petitioner filed W.P.No.12235 of 1994. The said writ petition was decided along with batch of writ petitions in which the vires of the Azamabad Industrial Area (Termination and Regulation of Lease) Act, 1992 (for short, 'the Act') was under challenge. This Court upheld the vires of the Act and thereafter the petitioner has carried the matter to the Supreme Court. By judgment, dated 1-8-1996 in Civil Appeal No.9169 of 1994, the Supreme Court directed that the case of the writ petitioner shall be considered for grant of fresh lease without taking into consideration the circumstance that it was earlier cancelled. Consequent to the said judgment of the Supreme Court, the first respondent issued G.O.Ms.No.367, dated 23-12-2003 extending the lease / freehold rights of the petitioner in respect of the remaining area by setting apart the three small scale industrial units. The petitioner claims that by virtue of G.O.Ms.No.367, dated 23-12-2003, it is incumbent on the respondent to redeliver the possession of the industrial plots to the petitioner. The petitioner also contends that since there was no sub-lease in favour of three small scale industrial units, the petitioner is entitled to restoration of the entire extent of the industrial plots. The petitioner also expressed its ready and willingness to abide by the terms and conditions as may be imposed by the respondents in terms of the Act. However, the respondents have not issued any proceedings. Consequent to several representations made by the petitioner, ultimately by letter dated 26-5-2004 the 2nd respondent – Commissioner of Industries called upon the petitioner to furnish documents such as sales tax assessment order for the year 1999-2000, Electricity Consumption Bill for February, 2000 and any other document in proof of the petitioner unit carrying on industrial activity as on the appointed date i.e, 17-2-2000.

The petitioner states that since the lease in favour of the petitioner was cancelled and the industrial plots which were in possession of the petitioner were resumed by the first respondent and the petitioner has been out of possession from 11-6-1993 the conditions imposed by the 2nd respondent are impossible of compliance. It is contended that since admittedly the industrial activity of the petitioner was stopped way back in the year 1993, the petitioner cannot now produce Final Sales Tax Assessment Order for the year 1999-2000 or Electricity Consumption Bill for February, 2000 or any other document in proof of carrying on industrial activity as on

17-2-2000. Hence, this writ petition contending that the action of the respondents in imposing the conditions which are impossible of compliance, thereby depriving the legitimate right of the petitioner for re-delivery of possession of the industrial plots in terms of G.O.Ms.No.367, dated 23-12-2003 is arbitrary and illegal.

On behalf of the respondents, a counter-affidavit has been filed.

A reading of the said counter-affidavit shows that the facts as pleaded by the petitioner leading to issuance of G.O.Ms.No.367, dated 23-12-2003 are not in dispute. However, it is contended that under G.O.Ms.No.367, dated 23-12-2003 lease / freehold rights in favour of the petitioner were extended, except the extent under the occupation of small scale industrial units directing the Commissioner of Industries to take further action in the matter as per law. Hence, the Commissioner of Industries who is the competent authority has to consider under the Azamabad Industrial Area (Termination & Regulation of Lease) Act, 1992 and the Amended Act No.1 of 2000. It is also stated that the application of the petitioner is being examined by the competent authority along with cases of many other applicants who filed similar applications for freehold rights and that the second respondent who was declared as competent authority by virtue of the Government Memo, dated 16-3-2004 has been disposing of the applications of occupant industrialists of Azamabad for grant of freehold rights. In the said process, the individual unit holders are being asked to furnish the documentary evidence in support of having carried on industrial activity as on the appointed date i.e., 17-2-2000 such as Sales Tax Assessment Orders, Electricity Bill, Details of Purchases and Sales, Annual Returns etc. On furnishing of the said information, the second respondent is examining the applications in accordance with the terms and conditions of lease deeds executed by them as well as the provisions contained under Section 3(1)(b) of the Act. So far as the case of the petitioner is concerned, the inspection of the premises by the Committee of the Officers has been done and the application of the petitioner is under process and will be finalized shortly.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

As can be seen from the material on record, in pursuance of the judgment of

the Supreme Court, the 1st respondent issued G.O.Ms.No.367, dated 23-12-2003 extending the lease / freehold rights to the petitioner company except to the extent in occupation of small scale industrial units. Under the same order, the second respondent was directed to verify the existing buildings which were constructed in Plot Nos.14/1 and 24/2 as per the existing sanction plan which are occupied by the Small Scale Industrial Units and also verify the partnership lease agreements entered into with small scale industrial units in the said premises and to take further action as per law. In the said order, it was mentioned that earlier order in G.O.Ms.No.223, dated 11-6-1993 wherein the leasehold rights granted to the petitioner were earlier terminated shall stand cancelled. That apart, the Supreme Court while disposing of the Appeal of the petitioner by Judgment dated 1-8-1996 directed that while considering the case of the petitioner for fresh lease, the fact that their lease was earlier cancelled shall not be taken into consideration. In the circumstances, I find force in the contention of the learned Counsel for the petitioner that the case of the petitioner cannot be placed on par with other applicants who filed applications for freehold rights. Since admittedly the petitioner was dispossessed in the year 1993, the respondents ought not to have insisted upon production of the documents as specified in the letter of the second respondent dated 26-5-2004. The specific contention of the petitioner that the said conditions are impossible of compliance since they were not in possession as on 17-2-2000 has not been answered by the respondents in their counter-affidavit.

In the circumstances, the Writ Petition is disposed of with a direction to the respondents to reconsider the request of the petitioner under their application dated 16-3-2004 for grant of freehold rights in terms of G.O.Ms.No.367, dated 23-12-2003, without insisting on production of the documents specified in the 2nd respondent's letter dated 26-5-2004 and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order. No costs.

10th June, 2005.

Gbs

To

1 The Principal Secretary, Government of Andhra Pradesh, Industries & Commerce (IF.Cell) Department, Secretariat, Hyderabad

2 The Commissioner of Industries, Andhra Pradesh, Chirag Ali Lane, Hyderabad

3. Two CCs to G.P. for Industries & Commerce, High Court of AP Bldgs, Hyderabad (OUT).

4. Two CD copies.